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December 10, 2003

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VIA ELECTRONIC MAIL

Mr. Phil Enis
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: CalTel Comments on the Loop and Transport Workshop

Dear Mr. Enis:

These are CalTel's comments on the Loop and Transport Workshop held on Thursday, December 4, 2003. Except for one minor edit communicated to staff and the parties, which we understand will be reflected in the Final Workshop Report, CalTel agrees with the summary of the Workshop set forth in Staff's December 8, 2003, Draft Workshop Report.¹ However, two very important and related points discussed during the Workshop require further elaboration.

First, the Commission must not lose sight of the overall objective of this portion of the nine month proceeding. As a primary objective, it is not to necessarily reach final determinations regarding each of thousand-plus routes and loops listed by the ILECs on November 20th. Instead, the primary objective should be to develop and implement to the extent feasible an accurate process of identifying, obtaining and analyzing the data required to make accurate, focused findings of non-impairment of loops or transport routes, and for applying the FCC's stated criteria of non-impairment to such data. Only then should specific alleged non-impaired routes or loops be analyzed. This process will be ongoing, since ILECs are permitted to file petitions for such showings on a repetitive basis in the future, with no limit as to the number or frequency of such filings.

¹ CalTel limited its proposed changes to the draft report to clarification of its own preliminary statement. Other parties, such as SBC and Verizon, have suggested changes to portions of the draft report other than their own statements. By limiting its suggested changes to the draft report CalTel did not waive any rights to argue the meaning of the TRO or the sufficiency or insufficiency of the evidentiary showing of any party in this proceeding, and any expression of opinion by the staff concerning these issues in its report is viewed by CalTel as just that – the current view of the staff.

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Each such filing will have a potential impact on the competitive marketplace, the ability of carriers to serve consumers, and thus the choices available to consumers. It is far more important to get this process right at the beginning than to make specific route or loop determinations at this time.

As discussed at the Workshop, this necessary prioritization of objectives is fully consistent with the FCC TRO, which states as follows at paragraphs 339-340 (emphasis added):

339. We expect states to complete their *initial reviews* applying the triggers and other analysis discussed above within nine months from the effective date of this Order. ... States that conduct this review *need only address specific customer locations for which there is relevant evidence in the proceeding* that the customer location satisfies one of the triggers or the potential deployment analysis specified in this Part.

340. After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional customer locations that satisfy the triggers.

Thus the Commission's obligation during this nine month process to "complete" reviews of specific loop locations (and pursuant to essentially identical language at paragraphs 417-418 of the TRO, specific transport routes) is limited to those instances where *sufficient* relevant evidence is presented by the ILEC. (See, TRO, footnote 991.) Therefore, the review of actual routes and loops must be secondary to establishing the foundational process and evidentiary requirements needed to develop such sufficient evidence. These basic requirements are not yet in place on either the process or content levels. For example, SBC and Verizon alleged during the Workshop that XO, ICG, Time Warner, and SCE had not responded to Commission data requests in a timely manner, when in fact each of them did so. Subsequently, SBC alleged that XO, ICG, and Time Warner responded *after* the Workshop, which is also not accurate.² As of this date, a workable process for defining, obtaining, tracking and distributing required data in a verifiable way does not seem to exist. Furthermore, with respect to the scope of required evidence, there is still no agreement amongst the parties as to the *specific data* required. Several parties have indicated that even full responses to the CPUC's data requests do not constitute sufficient data for purposes of a finding of non-impairment.

² In fact, not only did XO provide timely responses to the Commission's information requests, XO also provided responses to SBC's data requests, well in advance of the workshop. XO's responses to SBC included *all* of the data that XO provided to the Commission. Time Warner and SCE also responded on a timely basis, considering staff-granted extensions of time, to the Commission.

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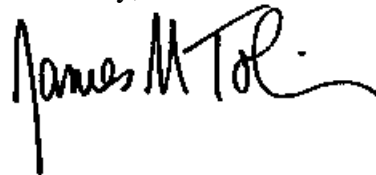
This fundamental set of definitions and procedures must be established before any accurate or sustainable finding of non-impairment for loops or transport can be made.

Second, in order to accomplish this primary objective within the nine month period allotted, changing ILEC showings concerning specific route or loop situations cannot be allowed to overshadow it. New data can always be found, and additional arguments derived. For this reason, any ILEC filings to supplement their November 20th testimony should be strictly limited to information which relates to one of the routes or loops identified in the November 20 testimony, and no "potential deployment" supplemental material should be permitted if such a case was not contained in the November 20 testimony.

If any supplemental ILEC filings are permitted, it is obviously necessary to provide responding parties the same amount of time to respond to this new set of data , as combined with the prior filings, as was provided by the original schedule for reply testimony; i.e., five to six weeks. It will be necessary, for example, to completely redo any analyses of the prior filings which have already been undertaken.

As the admitted weaknesses in the ILEC November 20 filings clearly demonstrate, the primary focus of this proceeding must remain on establishing a credible and accurate data gathering and analysis process before meaningful determinations can be made about any specific loop or route. In fact, clear and universally applied definitions of even these core terms are still required.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Tobin". The signature is fluid and cursive, with a long horizontal stroke at the end.

James M. Tobin

cc: Parties of Record